

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

In the Matter of )

Implementation of Sections 309(j) and )  
 337 of the Communications Act of 1934 )  
 as Amended )

Promotion of Spectrum Efficient )  
 Technologies on Certain Part 90 )  
 Frequencies )

Establishment of Public Service Radio )  
 Pool in the Private Mobile )  
 Frequencies Below 800 MHz )

WT Docket No. 99-8

RM-9332

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 FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

**COMMENTS OF RADSCAN, INC.**

Radscan, Inc. ("Radscan"), by its attorneys, and pursuant to § 1.415(a) of the Commission's Rules, hereby submits its comments in response to the *Notice of Proposed Rule Making* in the above-captioned proceeding.<sup>1</sup> The *Notice* seeks comment on proposed changes to the Commission's rules and policies to implement its auction authority, as revised by the Balanced Budget Act of 1997.<sup>2</sup> In particular, the *Notice* asks for comments regarding the scope of the exemption from competitive

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1. Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, Establishment of Public Service Radio Pool in the Private Mobile Frequencies Below 800 MHz, *Notice of Proposed Rule Making*, FCC 99-52 (rel. Mar. 25, 1999) ("Notice").
  2. Pub. L. No. 105-33, Title III, 111 Stat. 251 (1997) (amending Section 309(j) of the Communications Act) ("Balanced Budget Act").

bidding for public safety radio services, including which radio services or classes of services Congress intended to exempt from competitive bidding.<sup>3</sup>

Radscan is one of the largest users of multiple address system ("MAS") frequencies licensed under Part 101 of the Commission's rules. After the issuance of the *Notice*, the Commission released a Further Notice of Proposed Rule Making in WT Docket No. 97-81 which specifically seeks comment on the impact of the Balanced Budget Act on MAS spectrum.<sup>4</sup> Although Radscan intends to participate in WT Docket No. 97-81, we submit these comments to alert the Commission that a decision to set aside certain frequencies for public safety entities in the MAS bands has the potential to disrupt valuable services currently being provided by incumbent MAS licensees. Such disruption can be avoided by allocating any new public safety set-aside from unencumbered MAS spectrum.

## **BACKGROUND**

Radscan is a pioneer in the application of long-range radio technology to the security industry. Radscan has also been an active participant in all significant FCC proceedings concerning the licensing and use of MAS frequencies. In 1983, following the Commission's allocation of MAS frequencies, Radscan and its manufacturing affiliate, ADEMCO, embarked upon a multimillion-dollar development effort to design MAS transmitters and receivers that are affordable, spectrum-efficient, and versatile. After years of effort, in 1985, ADEMCO began manufacturing low-cost,

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3. *Notice* at ¶¶ 3, 23.

4. Amendment of the Commission's Rules Regarding Multiple Address Systems, *Further Notice of Proposed Rule Making and Order*, WT Docket No. 97-81 (rel. July 1, 1999).

one-way and two-way MAS subscriber equipment, high-performance MAS master stations, and associated installation tools. This equipment is now in widespread use throughout the security monitoring industry.

Today, with licenses for about 180 MAS master stations serving over 100,000 remote units in 22 major metropolitan areas, Radscan is one of the largest MAS licensees in the United States. Radscan is in the business of providing sophisticated wireless security alarm monitoring services to central station alarm companies, such as ADT Security Systems and SecurityLink, who, in turn, are in the business of monitoring the premises of their business and residential customers. Because radio signals are not influenced by the same factors that may interfere with wireline communications, Radscan's services are used to supplement and enhance the reliability of existing security monitoring systems. Many of Radscan's remote units are placed in high-risk security installations such as banks and jewelry stores.

Radscan and ADEMCO have a proven track record of success in the security industry. ADEMCO's equipment is approved by Underwriters' Laboratories for the highest grades of security service. In addition, the National Fire Prevention Association added Radscan's service to its fire prevention standards in 1990, enabling ADEMCO equipment to be used to meet building code requirements.

## **DISCUSSION**

### **A. The Commission Likely Will be Required to Set Aside Certain Frequencies for Licensing by Public Safety entities Exempt from the Auction Rules.**

The Balanced Budget Act specifically exempts from competitive bidding "public safety radio services, including private internal radio services used by State and local governments and non-

government entities and including emergency road services provided by not-for-profit organizations, that (i) are used to protect the safety of life, health, or property; and (ii) are not made commercially available to the public.”<sup>5</sup> The Commission has acknowledged that the creation of a public safety exemption may require it to set aside portions of the spectrum as exempt from competitive bidding.<sup>6</sup> Without such a set-aside, the Commission could be faced with mutually exclusive applications filed by both public safety entities exempt from auctions and by non-exempt entities subject to auctions. Resolution of such situations can raise difficult and complex problems.<sup>7</sup>

Some MAS licensees will satisfy the public safety exemption. For example, a number of utility, railroad, and pipeline companies hold MAS licenses, and the Conference Report accompanying the Balanced Budget Act specifically includes private internal radio services used by these industries within the public safety exemption.<sup>8</sup> Other MAS licensees, such as common carrier licensees who make transmission capacity available to the public, will not fall within the exemption.<sup>9</sup>

Because MAS frequencies are used by both exempt and non-exempt licensees, the Commission may be required to partition the MAS bands into separate frequency bands, with certain

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5. 47 U.S.C. § 309(j)(2)(A).

6. *See, e.g., Notice* at ¶¶ 28, 30, 38, 40-42.

7. *See Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licensees, First Report and Order*, 13 FCC Rcd 15920, 15930 (complicated problems arise when noncommercial and commercial broadcasters compete for same channel).

8. H.R. Conf. Rep. No. 105-217, 105<sup>th</sup> Cong., 1<sup>st</sup> Sess., at 572 (1997).

9. *See Amendment of the Commission’s rules Regarding Multiple Address Systems, Notice of Proposed Rule Making*, 12 FCC Rcd 7973, 7979 (1997) (“*MAS Notice*”) (common carrier systems predominate in 928/959 MHz MAS bands); 47 U.S.C. § 309(j)(2)(A) (exempting only services “not made commercially available to the public”).

frequencies to be allotted by competitive bidding, and others to be allotted on a first-come, first-served basis to public safety entities. However, as discussed below, the Commission must proceed with caution because an ill-advised partitioning of the MAS spectrum would have significant repercussions to the security monitoring industry and other MAS licensees.

**B. In Creating a Public Safety Set-Aside, the Commission Must Not Restrict Incumbent Uses of Certain MAS Spectrum.**

There are unique technical and operational characteristics associated with the use of frequencies in the 928/952/956 MHz band that must be considered in conjunction with any proposal to change the eligibility for use of this band.<sup>10</sup> For example, although Radscan uses only four channels in the 928/952/956 MHz band, it simply cannot be grandfathered or relocated from those four channels without causing serious disruptions in security or the discontinuance altogether of the public safety services that Radscan provides. The technical and operational reasons for this situation have been thoroughly documented.<sup>11</sup> Therefore, although the Commission has, when changing

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10. The MAS bands consist of three distinct groups of channels with different frequency characteristics. The three groups are referred to as the 928/952/956 MHz bands, the 932/941 MHz bands, and the 928/959 MHz bands. *See generally MAS Notice, supra.*

11. *See* Comments of Radscan in WT Docket No. 97-81 at 8-11 & Engineering Statement (Attachment A) (filed April 21, 1997); Reply Comments of Radscan in WT Docket No. 97-81 at 4-6 (filed May 16, 1997). In addition, on a previous occasion the Commission found it necessary to rescind a rule that would have effectively grandfathered existing MAS systems and altered the technical basis for new licenses. *See* Amendment of the Rules to Eliminate Grandfathering Provisions Applicable to Licensees on MAS Frequencies, *Report and Order*, 8 FCC Rcd 2801 (1993) (acknowledging service disruption that would result from compliance with technical changes) .

eligibility rules for other spectrum, frozen incumbents in place<sup>12</sup> or relocated incumbents to other spectrum,<sup>13</sup> these are not viable options in the 928/952/956 MHz band.

As an example of the kind of partitioning that would be unworkable, Radscan is particularly concerned with a proposal by UTC, the Telecommunications Association and other entities representing utilities, railroads and pipelines to set aside the 928/952/956 MHz band for what they have deemed “critical infrastructure industries.”<sup>14</sup> These entities define “critical infrastructure industries” to include power, petroleum or railroad services, but presumably exclude other services such as alarm monitoring.<sup>15</sup> While this proposal is not squarely before the Commission in this proceeding, it serves to illustrate the dangers of applying eligibility restrictions to certain MAS frequencies. The proposal, if adopted, would deprive Radscan and other incumbent licensees in the 928/952/956 MHz band of the ability to apply for new licenses, and thus, needlessly disrupt the services these licensees provide.<sup>16</sup>

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12. See, e.g., Amendment of Part 90 of the Commission’s Rules to Facilitate Further Development of SMR Systems in the 800 MHz Frequency Band, *First Report and Order*, 11 FCC Rcd 1463, 1513 (1995).

13. See, e.g., Amendment of the Commission’s Rules to Establish New Personal Communications Services, *Memorandum Opinion and Order*, 9 FCC Rcd 4957, 4965 (1994).

14. See Ex Parte Communication by American Petroleum Institute, WT Docket No. 97-81 (Oct. 27, 1998); Ex Parte Joint Supplemental Comments of UTC, the Telecommunications Association, American Water Works Association, East Bay Municipal Utility District, American Petroleum Institute, and Association of American Railroads, WT Docket No. 97-81 (Oct. 30, 1998).

15. Ex Parte Joint Supplemental Comments, *supra*, at 4.

16. In the past, similar, but less restrictive, eligibility rules have been proposed but rejected. In 1997, the Commission proposed to restrict the 928/952/956 MHz bands exclusively to  
(continued...)

**C. Any New Public Safety Set-Aside for MAS Should be in the 932/941 MHz Bands, not in the 928/952/956 MHz Bands.**

Radscan recommends that the Commission not create a public safety set-aside of any kind within the 928/952/956 MHz bands. These bands have been licensed for more than 15 years for a wide variety of efficient and beneficial uses, not all of which will qualify for the public safety exemption. While Radscan itself likely will fall within the public safety exemption,<sup>17</sup> other important uses of the band may not be classified as public safety uses and could thus be excluded.

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16. (...continued)

“private, internal use” and permit “subscriber-based” operations only in the 932/941 MHz and 928/959 MHz bands. *MAS Notice, supra*. The Commission’s proposal was based, as here, upon the need to separate frequencies allotted through competitive bidding from those allotted through first-come, first-served applications. Consistent with its proposal, the Commission froze all new applications for subscriber-based uses of the 928/952/956 MHz bands. Several MAS licensees, including Radscan, petitioned for reconsideration of the freeze with respect to certain ongoing uses of those bands. Significant detrimental effects were avoided as a result of a subsequent order that found these uses to be private, internal uses and not subscriber-based. *See* GTECH Corporation, CN WAN Corporation, Radscan of Detroit, Inc., TeleBeeper of New Mexico, Inc. and Unicom Corporation, *Memorandum Opinion and Order*, 13 FCC Rcd 4290 (1998) (“*GTECH Recon. Order*”).

17. The Commission has already determined that Radscan’s use of the MAS spectrum is for private, internal communications. *See GTECH Recon. Order*. In addition, Radscan is a “non-government entity.” The Conference Report states that the exemption is “much broader than the explicit definition of ‘public safety services’ contained in Section 337 of the Communications Act,” which limits “nongovernmental organizations” to those that are “authorized by a governmental entity whose primary mission is the provision of such services.” *See Notice* at 15. Moreover, Radscan clearly uses the spectrum to protect the safety of life and property. Lastly, Radscan does not make its spectrum commercially available to the public. The Commission has previously determined that Radscan is not compensated for providing a communications service, but rather for an alarm monitoring service, and that “Radscan merely uses MAS spectrum in the course of providing this monitoring service.” *GTECH Recon. Order* at 8. In all of these respects, Radscan provides a service analogous to a private ambulance service, which is the type of service Congress specifically anticipated would be eligible for the public safety exemption. *See Notice* at ¶ 21. Just like a private ambulance operator, Radscan uses licensed frequencies in the course of providing a service that protects the safety of life and property.

Instead, if the Commission determines that a public safety set-aside of MAS frequencies is necessary, it should set aside spectrum in the 932/941 MHz bands for exempt MAS entities. The 932/941 MHz bands currently are nearly vacant, since the Commission recently dismissed all pending applications for frequencies in these bands that were filed after the bands were opened in 1989.<sup>18</sup> Therefore, the 932/941 MHz bands are particularly well suited for restrictive licensing because there are few incumbents whose rights can potentially be adversely affected by a “public safety” licensing restriction.

### CONCLUSION

The Balanced Budget Act likely will require the Commission to set aside certain frequencies for exclusive use by public safety entities meeting the exemption contained in the Act. In doing so, the Commission should be careful not to disrupt incumbent operations that depend upon the continued unrestricted availability of certain frequencies. While certain MAS bands are particularly

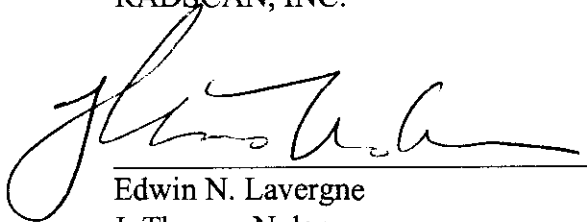
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18. In 1989, the Commission allocated forty 12.5 kHz channel pairs in these bands for MAS use, and numerous applications were filed in anticipation of licenses being awarded for these channels by lottery. However, due to the passage of the Balanced Budget Act, the Commission dismissed all pending MAS applications for these bands. Amendment of the Commission’s Rules Regarding Multiple Address Systems, *Order*, 13 FCC Rcd 17954 (1998).

susceptible to this type of disruption because of the nature of services that incumbent licensees provide, adequate frequencies remain unencumbered for any public safety set-aside that may be required in these bands.

Respectfully submitted,

RADSCAN, INC.

A handwritten signature in black ink, appearing to read 'Edwin N. Lavergne', is written over a horizontal line.

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